

ORIGINAL

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C. 20554

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JUN - 5 2002

In re Applications of

COMCAST CORPORATION
and subsidiaries

and

AT&T COMCAST CORPORATION

For Transfer of Control

AT&T CORP.
and subsidiaries

and

AT&T COMCAST CORPORATION

For Transfer of Control

TO: Chief, Media Bureau

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MB DOCKET NO. 02-70

REPLY TO
OPPOSITION TO PETITION TO DENY

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Lisa Burton, Carmen (Robinson) Gonzalez, Betty Maina, Tracey Massay, Osmisa Peacock, Kizzie Sanders, Anthony Scott, Deborah Maria Shepherd, Maria Smith, Gloria Marie Mitchell Taylor, Zelda Tepper and Patrick Young (collectively referred to as "Petitioners"), by their attorneys, hereby respectfully submit their Reply to the "Reply to Comments and Petitions to Deny Applications for Consent to Transfer Control" jointly filed by AT&T Corp.

(AT&T) and Comcast Corporation (Comcast) on May 21, 2002.

In so doing, the following is shown:

1. AT&T's comments and tactics in its May 21, 2002 missive demonstrate a stunning corporate conceit. AT&T really demonstrates that its corporate motto of years gone by, "Reach Out and Touch Someone", really should have been "Reach Out and Crush Someone".

2. AT&T couches its pleading in terms of "the claims of malicious prosecution raised by Mr. Kelly", perhaps to trivialize them because Mr. Kelly is an American of Irish descent and because he is a sole practitioner. Those claims are not those of the undersigned. Rather, those are the claims of eleven African American citizens and one Hispanic American citizen. The claims belong to them; they do not belong to the undersigned. By refusing to acknowledge that it harmed twelve citizens of minority descent, instead attempting to diminish the heinousness of its actions by referring only to Petitioners' Caucasian attorney, AT&T is putting on a classic smoke and mirrors show.

3. The representation by the undersigned and his Atlanta colleagues of Mesdames Burton, Gonzalez, Maina, Massay, Peacock, Sanders, Anthony Scott, Shepherd, Smith, Taylor and Tepper and the Messrs. Scott and Young is in the

great tradition of attorneys lending their time and talents to expose and defeat those unscrupulous businessmen who would exploit and harm people of color and minority neighborhoods through unconscionable and predatory business practices. See e.g. **Williams v. Walker-Thomas Furniture Co.**, 198 A.2d 914 (D.C.C.A. 1964), reversed, 350 F.2d 445 (D. C. Cir. 1965)¹.

4. AT&T feigns offense that the undersigned, in a zealous and effective representation of his minority citizen clients Mesdames Burton, Gonzalez, Maina, Massay, Peacock, Sanders, Anthony Scott, Shepherd, Smith, Taylor and Tepper and the Messrs. Scott and Young would charge AT&T with racist conduct, when their civil law suit in the Georgia state court does not. There is a good reason for this--racism is not a necessary element for Petitioners to be able to recover damages on their malicious prosecution claims in state court. However, as has been stated in such appellate precedents as **Office of Communication of the United Church of Christ v. FCC**, 425 F.2d 543 (D. C. Cir. 1969) and **Bilingual Bicultural Coalition on the Mass Media**

¹The undersigned remembers with nostalgia when the **Walker-Thomas** case was taught in Professor Gilbert Ginsburg's "Contracts" class at George Washington University's National Law Center in 1976. Mr. Mike Hammer, now a member of AT&T's illustrious counsel team, was sitting a few seats away. I wonder whether he is proud to be representing to this Commission as a servant of "the public interest, convenience and necessity" a client who engaged in conduct far worse than the "sharp practice and irresponsible business dealings" of the furniture merchant condemned by Judge Quinn of the D. C. Court of Appeals, 198 A.2d 914.

v. **FCC**, 595 F.2d 621 (D. C. Cir. 1978), intentional racial discrimination certainly is a factor to be considered in a licensing proceeding before the Federal Communications Commission. In the instant proceeding, we are not dealing with elements of a statutory or common law offense, but rather the Commission must confront head on the question of whether AT&T possesses the basic character qualifications required to be a Commission licensee and to transfer Commission licenses.

5. Let's review why AT&T's actions were racially discriminatory in nature. AT&T targeted minority neighborhoods for its "investigations". AT&T intentionally had eleven African-American and one Hispanic American arrested for "cable theft", when AT&T knew or should have known that none of those arrested had engaged in "cable theft". This is because it is virtually impossible for someone unfamiliar with cable technology to steal cable television service. Therefore, most cable theft is carried out by experienced "hookup artists"—current or former cable company field technicians who supplement their incomes by charging friends and neighbors small fees (typically between \$20 and \$50) for unauthorized "hookups". It is well known in the industry, through its filing of FCC EEO and EEOC Form EEO-1 reports that most cable company field

technicians are White. Cable piracy is the ultimate word-of-mouth business. The "customers" turn out to be the friends and neighbors of the "hookup artists", who tend also to be predominantly White. This is well known in the cable television industry. It would be astonishing to find a cable television executive who regards cable theft as predominantly or even disproportionately done by minorities.

6. Fascinatingly, there is no evidence that in the wealthy, predominantly White suburbs of Atlanta, AT&T used tactics like night visits with police officers, warrantless searches with video cameras running, or swearing out complaints for arrests without probable cause (like AT&T did in the minority neighborhoods near Marietta). Nor is there evidence that City of Marietta or Cobb County officials relied on anything other than AT&T's complaints in deciding whether to prosecute. AT&T charges that the allegations made in our "Petition to Deny" were "offensive and baseless". It is AT&T that acted in an "offensive and baseless" manner, subjecting innocent minority citizens to the terrors of arrest, the dehumanizing "jail processing", the frights attendant to a night in jail, and, in a number of cases, the ruin of careers. Given the manner in which illegal cable hookups are done (as described above), it is

difficult to imagine any reason other than race that would have motivated AT&T's choice of targets for the twelve prosecutions.

V. Conclusion

7. AT&T engaged in racial discrimination by intentionally and willfully arranging for the arrest of twelve minority citizens of the Marietta, Georgia area, despite the fact that none of said twelve minority citizens had ever arranged an illegal "hookup". One was a paid subscriber with a cancelled check; another had terminated her service; three never had cable service, and in one of those cases AT&T's own employees had confirmed after the arrests that there it was impossible for that person to have had cable service prior to the date of arrest; six other cases involved "unprocessed move-outs" by former tenants, where through AT&T's own negligence cable service had not been turned off before new tenants had moved in, and in two of those cases the arrested persons subscribed to a direct broadcast satellite service instead of cable, and the other arrested persons had tried to obtain new cable service from AT&T (two of the arrested persons were guests, rather than the lessee of the apartments "raided").

8. The bottom line is that not one of those arrested was a cable thief. AT&T's sleazy and unconscionable business practices squarely implicate the racial divide in communications, just as criminal prosecutions of African Americans who tried to vote in Georgia implicated the racial divide in democratic participation two generations ago. AT&T is dominant in the cable television industry, raising the possibility that its corporate behavior in having minority citizens rounded up and arrested is neither isolated nor aberrant.

9. It is now time for the FCC to put a stop to AT&T's blatant attempts to prosecute innocent minority citizens for the "crime" of "watching TV while Black". This case is so notorious that the FCC can use it for both "specific deterrence" (directed to AT&T) and "general deterrence" (directed to the entire cable television industry). The public interest, convenience and necessity demands no less.

10. The Commission must designate the above-captioned proceeding for hearing upon at least the following issues:

(1) To determine whether AT&T and/or its subsidiaries, employees or agents engaged in racial discrimination against the residents of the Natchez Trace and Hidden Glen apartment communities in Cobb County, Georgia;

(2) To determine whether AT&T and/or its subsidiaries, employees or agents engaged in unfair trade practices by securing arrest warrants and maliciously prosecuting residents of the Natchez Trace and Hidden Glen apartment communities for not subscribing to AT&T cable television services; and


(3) In light of the facts and circumstances adduced pursuant to issues (1) and (2) above, whether AT&T Corporation and/or its subsidiaries possess the requisite character qualifications to be permitted to transfer control of their cable television system and related licenses and radio stations; and

(4) In light of the facts and circumstances adduced pursuant to issues (1), (2) and (3) above, whether the public interest, convenience and necessity would be served by a grant of the above-captioned applications.

WHEREFORE, Lisa Burton, Carmen (Robinson) Gonzalez, Betty Maina, Tracey Massay, Osmisa Peacock, Kizzie Sanders, Anthony Scott, Deborah Maria Shepherd, Maria Smith, Gloria Marie Mitchell Taylor, Zelda Tepper and Patrick Young urge that the above-captioned applications BE DENIED, DISMISSED OR DESIGNATED FOR HEARING upon the issues framed above and/or other appropriate hearing issues.

Respectfully submitted,

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DATED: June 5, 2002

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing "Reply to Opposition to Petition to Deny" were served by either first-class United States mail, postage prepaid (or by e-mail as shown by a "+" sign) on this 5th day of June, 2002, upon the following:

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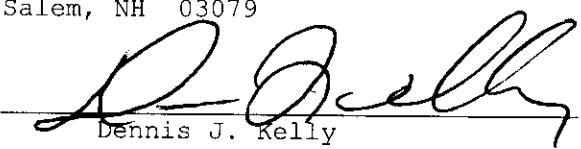
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